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3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 KENNETH STEVEN HONTZ,

7 Petitioner,

8 v.

9 STATE OF WASHINGTON,

10 Respondents.

No. C11-5232 BHS/KLS

ORDER TO SHOW CAUSE AND
DENYING FURTHER EXTENSIONS OF
TIME

11 Petitioner seeks federal habeas corpus relief pursuant to 28 U.S.C. § 2254. This case has
12 been referred to United States Magistrate Judge Karen L. Strombom pursuant to Title 28 U.S.C.
13 § 636 (b) (1) and Local MJR 3 and 4. Petitioner indicates that he was sentenced on February 27,
14 2008 in Thurston County Superior Court Case No. 07-1-09972-7 to 30 days jail and 1 year
15 community custody; and on April 18, 2008 in Thurston County Case No. 08-1-00539-2 to 30
16 days jail and 4 years community custody. ECF No. 1. Petitioner's mailing address reflects that
17 he is no longer in the custody of the Washington State Department of Corrections.

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19 **A. In Custody Requirement**

20 Subject matter jurisdiction under 28 U.S.C. § 2254 is limited to those persons "in custody
21 pursuant to the judgment of a State court." 28 U.S.C. § 2254(a); *Brock v. Weston*, 31 F.3d 887,
22 889 (9th Cir.1994). Once a petitioner's sentence has fully expired, he is precluded from
23 challenging that sentence because he is no longer "in custody" for purposes of federal habeas
24 review. *Maleng v. Cook*, 490 U.S. 488, 492 (1989). The collateral consequences of an expired
25 conviction, while sufficient to preclude mootness, are not sufficient to satisfy the "in custody"
26

1 requirement of § 2254. *Feldman v. Perrill*, 902 F.2d 1445, 1448 (9th Cir.1990)(citing *Maleng v.*
2 *Cook*, 490 U.S. at 492). See also, *Carafas v. LaVallee*, 391 U.S. 234 (1968).

3 The “in custody” requirement of § 2254 may be met even if the petitioner is not
4 physically confined. *Dow v. Circuit Court of the First Circuit*, 995 F.2d 922, 923 (9th Cir.1993),
5 citing *Jones v. Cunningham*, 371 U.S. 236, 239-40 (1963). See *Jones*, 371 U.S. at 240-43
6 (parole tantamount to custody); *Hensley v. Municipal Court*, 411 U.S. 345, 348-49
7 (1973)(release on personal recognizance pending appeal satisfies “in custody” requirement);
8 *Dow*, 995 F.2d at 923 (mandatory attendance at alcohol rehabilitation program satisfies in
9 custody requirement); *Barry v. Bergen County Probation Department*, 128 F.3d 152 (3rd
10 Cir.1997)(community service obligation rendered petitioner “in custody” for purposes of habeas
11 statute). However, in order to satisfy the custody requirement, the “petitioner must demonstrate
12 that he is subject to a significant restraint upon his liberty ‘not shared by the public generally.’”
13 *Dow*, 995 F.2d at 923, quoting *Jones*, 371 U.S. at 240.
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16 The court is unable to determine based on the information submitted by Petitioner, the
17 nature and terms of Petitioner’s community custody and whether the terms of the community
18 custody are sufficient to render Petitioner “in custody” for purposes of federal habeas review.
19 Petitioner is ordered to provide the Court with the terms of his community custody **on or before**
20 **July 1, 2011**. If Petitioner fails to do so, the Court will enter a report and recommendation that
21 the petition be dismissed.
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23 **2. Extensions of Time to File Brief**

24 The petition for writ of habeas corpus was filed in this Court on March 24, 2011. On the
25 same day, Petitioner also filed a motion to file supporting brief and a motion for extension of
26 time. ECF Nos. 2 and 3. On March 29, 2011, the Court granted the extension of time and on

1 May 23, 2011, the Court granted a second extension of time. ECF Nos. 5 and 10. Petitioner's
2 latest deadline for filing a supporting brief was June 5, 2011. ECF No. 10. On June 1, 2011,
3 Petitioner filed a Motion to Supplement Support Brief. ECF No. 11. On June 2, 2011, Petitioner
4 filed a Motion for Extension of Time. ECF No. 12. On June 3, 2011, Petitioner filed a Motion
5 for Extension of Time to File Federal Citations (ECF No. 13), a Motion to Amend Petition (ECF
6 No. 14), and a 113 page Brief in Support of his Petition for Writ of Habeas Corpus, with 282
7 pages of exhibits. (ECF No. 15).

9 Petitioner's motion to amend his petition to name the Washington Department of
10 Corrections as the correct Respondent (ECF No. 14) is **GRANTED**. The Clerk shall alter the
11 caption to reflect the change. Petitioner is not required to file anything further to effectuate this
12 change.

13 Petitioner's motions for further extensions of time to supplement and/or amend his
14 petition (ECF Nos. 11, 12, and 13) are **DENIED**. As noted above, there is a question as to
15 whether Petitioner is "in custody" for purposes of § 2254. Thus, no further action will be taken
16 in this case until Petitioner has responded to the Court's Order to Show Cause.

18 Assuming Petitioner meets the "in custody" requirement, his petition and brief will be
19 served on Respondent. At that time, the Respondent shall indicate in its Answer to the habeas
20 petition what transcripts are available and shall attach the relevant portions of the record for the
21 Court's review. Rules Governing Section 2254 Cases in the U.S. Dist. Cts., 28 U.S.C. Pt. VI, ch.
22 153, Rule 5. After Respondent has done so, Petitioner will be given another opportunity to
23 respond and submit additional briefing.

25 Accordingly, it is **ORDERED**:

- 1 (1) Petitioner shall provide the Court with the terms of his community custody
2 **on or before July 8, 2011.** If Petitioner fails to do so, the court will enter
3 a report and recommendation that the petition be dismissed.
4 (2) Petitioner's motions to supplement and for extension (ECF Nos. 11, 12
5 and 13) are **DENIED.**
6 (3) Petitioner's motion to amend (ECF No. 14) is **GRANTED.** The Clerk is
7 directed to change the caption to reflect the Washington Department of
8 Corrections as Respondent.
9 (4) The Court Clerk is directed to send a copy of this Order to Petitioner.

10 **DATED** this 16th day of June, 2011.

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12 Karen L. Strombom
13 United States Magistrate Judge
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